

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
REIDAR O. HAMMOND,) **Supreme Court #SC87065**
)
Respondent.)

RESPONDENT REIDAR HAMMOND'S BRIEF

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STATEMENT OF FACTS

On the outset, Hammond wants to make it clear to the Court that he accepts, understands and is grateful for the admonishment issued him by the hearing panel. He does not appeal the panel's findings and prays that the Court will not disturb those conclusions. While the facts of the case are largely undisputed, and a complete recantation of the facts would likely not benefit the Court, the Court should note that certain mitigating facts have been omitted by the OCDC in their brief.

For instance, on the topic of notice to Meier's of Hammond's opinion of the Meier's case, the OCDC writes that Mr. Meier does not remember any discussion about a motion for summary judgment, or any discussion of the general status of the lawsuit, arising at all during the June 6, 2002 pre-deposition meeting with Mr. Hammond. **Appellant's Brief 8.** However the OCDC fails to report that Mrs. Meier did remember that the merits of the case were discussed on June 6, 2002. **App. 71-72 (T. 153-154).**

And the OCDC points out how Mr. Meier doesn't remember discussing settlement of the case on June 10, 2002. **Appellant's Brief 12.** However, the record indicates that Mr. Hammond billed the Meiers for a discussion of the need to settle the case on June 10, 2002. And the Meiers paid that bill without dispute. **App. 58-59 (T. 101-102).**

The OCDC does correctly recognize that Hammond knew he had a problem and sought help from Mr. Farris. Hammond relayed to Farris that the "covenants were the covenants," and he did not know how to get around them. **App. 77 (T. 175).** Farris directed Hammond to a case Farris had recently handled wherein he said he had

succeeded in defeating a summary judgment motion by use of equitable arguments. **App. 77 (T. 175)**. Farris suggested to Hammond that he follow the example Farris had set in *Young v. Archer*,¹ where Farris “successfully defeated a Motion for Summary Judgment with no affidavits and based only upon an equitable defense.” **App. 92 (T. 236-237)**.

While the OCDC reports that Mr. Hammond’s opinion that the Meiers could not prevail coalesced after the Meiers’ depositions were taken in early June. **App. 75 (T. 166)**, this statement should be taken in the context of Hammond not having perfect knowledge of how Judge Eiffort would react to his equitable argument. Hammond’s testimony on the whole however would indicate that his opinion that the Meiers would be unsuccessful in their claim was ultimately formed in front of Judge Eiffort on June 20, 2005. **E.g. App. 74 (T. 165)**.

At the hearing on June 20, the presiding judge, Judge Eiffert, verbally indicated that he was going to rule against the Meiers and the *Young v. Archer* equitable argument. **App. 74 (T. 165)**. As soon as he could, following the Meiers return from vacation around June 25, Mr. Hammond relayed to Mr. Meier that the indication from the hearing was that the Meiers were going to lose the case and that they should settle while they could. **App. 56-57 (T. 96-99), 65 (T. 127-128), 74-75 (T. 165-166)**.

The OCDC also omits that Mr. Meier was aware that the Order Meier claims was hidden from him was a public record. **App. 67, (T. 134-5)**. Mr. Meier was aware that he could get a copy at the Taney County Courthouse. **App. 67, (T. 134-5)**. Moreover Meier

¹ *Young v. Ernst*, 113 S.W.3d 695 (Mo. App. 2003).

was even in the Taney County Court house in the Fall of 2002, and knew that if he had merely gone to the Clerk's office he would have his copy of the Order. **App. 67, (T. 134-5)**. And Mr. Meier knew about Missouri Case Net and could have received a copy of the Order on the internet as well. **App. 67, (T. 134-5)**.

POINTS RELIED ON

I.

**RULE 5.19 DOES NOT PROVIDE FOR REVIEW BY THIS COURT
OF AN ACCEPTED WRITTEN ADMONISHMENT IN THE EVENT
DISCIPLINARY COUNSEL DOES NOT CONCUR WITH THE
PANEL'S ISSUANCE OF AN ADMONITION.**

Rule 5.19

POINTS RELIED ON

II.

THE HEARING PANEL'S DETERMINATION THAT HAMMOND ADEQUATELY COMMUNICATED HIS POSITION ON THE MERITS OF THE MEIERS CASE WAS WELL SUPPORTED BY THE EVIDENCE AND SHOULD BE AFFIRMED BY THE COURT.

POINTS RELIED ON

III.

**THE SUPREME COURT SHOULD CONCUR IN THE WRITTEN
ADMONISHMENT FOR RESPONDENT HAMMOND BECAUSE
OF THE PRESENCE OF MITIGATING FACTORS.**

ABA Standards for Imposing Lawyer Sanctions (1991 ed.) #4.44, #9.32

ARGUMENT

I.

RULE 5.19 DOES NOT PROVIDE FOR REVIEW BY THIS COURT OF AN ACCEPTED WRITTEN ADMONISHMENT IN THE EVENT DISCIPLINARY COUNSEL DOES NOT CONCUR WITH THE PANEL'S ISSUANCE OF AN ADMONITION.

As the OCDC correctly points out, Rule 5.19 provides only for review of dismissals by the Hearing Panel, and does not provide for review by the Court in the event that a written admonishment has been accepted. No rule has been offered that allows for this Court's review in this case. As such, this appeal is non-compliant and the Court should dismiss this appeal forthwith.

The OCDC offers several public policy reasons that the Court should allow this appeal based on the duties and needs of the OCDC to regulate the bar. All of these arguments however disregard that the Hearing Panel has a surpassingly solemn duty of its own to hear and fairly determine the cases brought before it. And it is the ultimately the panel's fulfillment of that duty that protects the public from unethical lawyers in situations where there is no trial to the Court.

Further, it is hard to see how the acceptance of discipline by Mr. Hammond has a deleterious effect on the public. Hammond has admitted his failings and accepted the admonishment of the hearing panel. While Hammond will humbly accept whatever discipline this Court finds reasonable, it would seem, to the undersigned anyway, that the

public is best served when the plain language of the law, including Rule 5.19, really is the law. When the Court modifies its own well stated rules to serve the interest of any litigant it attacks the certainty of its own pronouncements. It would thus seem better for the Court to amend its rules in the future, rather than to bend them on a case by case basis at the request of OCDC.

ARGUMENT

II.

THE HEARING PANEL'S DETERMINATION THAT HAMMOND ADEQUATELY COMMUNICATED HIS CHANGE OF POSITION ON THE MERITS OF THE MEIERS CASE WAS WELL SUPPORTED BY THE EVIDENCE AND SHOULD BE AFFIRMED BY THE COURT.

The disciplinary hearing panel concluded that Respondent Hammond violated Rule 4-1.4(a) inasmuch as he failed timely to provide the Meiers with a copy of the uncomplimentary July 11 docket entry. Hammond accepts the admonishment and wishes to express his continued contrition to the Meiers, the profession and the Court.

The panel's conclusion, however, that Respondent Hammond did not violate Rule 4-1.4(b), is well supported by the evidence. While Mr. Meier doesn't remember, Mrs. Meier reported discussing the merits of the case with Mr. Hammond on June 6, 2002. And Hammond's testimony that he discussed settling the case with Meier during a June 10 telephone conversation. These conversations laid out Hammond's understanding before the June 20, 2002 summary judgment hearing.

Before June 20, 2002, Hammond had no way to know how Judge Eiffoort would react to his equitable argument that the Meiers had been disparately treated. On June 20, 2002, at the hearing, Hammond found out. Meier testified that Hammond discussed the Merits of the case with him on June 25, 2002, which was as soon as Hammond could

have done so because Meier was on vacation. Meier also emailed Farris on July 8, 2002 to discuss the merits, and the merits were further discussed at various times when the order was being issued on July 12 or 13, 2002. Given all of these conversations and the obvious conclusion that the hearing precipitated the change of position, the Hearing panel correctly found that Meier had been adequately informed as to Hammond's change of position on the case.

ARGUMENT

III.

THE SUPREME COURT SHOULD CONCUR IN THE WRITTEN ADMONISHMENT FOR RESPONDENT HAMMOND BECAUSE OF THE PRESENCE OF MITIGATING FACTORS.

The ABA Standards for Imposing Lawyer Sanctions provide both an analytical framework and black letter rules for the measure of discipline to be meted out to an errant attorney. The OCDC points out a statement from the analytical framework proposed in the ABA's Standards, arguing that because of the multiple violations found by the hearing panel that admonition will rarely, if ever, be a sufficient sanction in a case involving multiple Rule violations. However, Hammond argues that the findings of a lack of diligence and competence in this case are not really two separate violations, but are really two sides of the same coin. As such they should be considered together as a single violation, not aggregated into aggravation.

Hammond asks the Court to go farther than the quotation of prefatory words from the ABA Standards offered by the OCDC to justify a sterner sanction than admonishment. Hammond asks that the Court consider that his conduct, albeit negligent, did not result in any injury to the Meiers. And, according to ABA Standards for Imposing Lawyer Sanctions #4.44, admonishment is thus appropriate.

Hammond also asks the Court to consider the mitigating factors found in ABA Standards for Imposing Lawyer Sanctions #9.32 including Hammond's absence of a

disciplinary record, lack of evil motive and his candor with the OCDC, the hearing panel, and this Court. In toto, Hammond prays that the Court will find that admonishment is appropriate when it conducts a complete review of the record.

CONCLUSION

Reidar Hammond admits that he violated the Rules of Professional Conduct in his representation of the Meiers. However, given that no harm came to the Meiers, Hammond's lack of evil motive, and Hammond's heretofore spotless disciplinary record, the Court should allow the written admonishment from the hearing panel to stand.

Respectfully submitted,

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2005, two copies of
RESPONDENT REIDAR HAMMOND'S BRIEF and a diskette containing the brief in
Microsoft Word format have been sent via First Class mail to:

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PETER GABRIEL BENDER

CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 1,902 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Computer Associates EZTrust Anti-Virus software was used to scan the disk for viruses and that it is virus free.

PETER GABRIEL BENDER